



## CALIFORNIA'S LAW BANNING PLASTIC BAGS

By: Eva Jacobson, Legislative Fellow

### ISSUE

Provide a summary of California's new law ([Senate Bill 270](#)) banning single-use carryout bags from retail stores.

### SUMMARY

The law prohibits stores from providing single-use plastic carryout bags to customers. It permits stores to sell and distribute recycled paper bags and reusable grocery bags that meet specified standards, but they must sell them for at least 10 cents per bag. The law will be implemented in two phases. Under the first phase, stores that have annual gross sales of at least \$2 million or at least 10,000 square feet of retail floor space and a pharmacy must comply with the act. The second phase imposes the same requirements on convenience food stores, foodmarts, or other similar entities.

The law also requires producers of reusable bags to (1) be certified by a third party, and (2) submit proof of producer certification to the Department of Resources Recycling and Recovery ("department"). The law authorizes cities, counties, and the state to fine a person or entity for violations, but is silent regarding due process procedures. It also appropriates \$2 million for loans to promote the manufacture and recycling of plastic reusable grocery bags in California.

The law explicitly preempts any city or county ordinance or policy addressing single-use, reusable, or recyclable bags adopted on or after September 1, 2014, but it "grandfathers" such an ordinance if it was adopted before September 1, 2014.

In a related development, California may hold a referendum on whether to overturn SB 270. The California Secretary of State is currently verifying signatures from the more than 800,000 signatures submitted as part of a petition drive to force a referendum. Most observers believe a referendum will take place.

## **SINGLE-USE CARRYOUT BAGS: BAN AND EXCEPTIONS**

Effective July 1, 2015, the first phase of the law prohibits stores that have annual gross sales of \$2 million or 10,000 square feet of retail floor space and a pharmacy from providing a single-use carryout bag to a customer at the point of sale. It applies to store-provided, single-use carryout bags made of plastic, paper, or other materials that do not meet the law's standard for recycled paper or reusable grocery bags. The statute exempts bags (1) provided by the pharmacy, (2) used to protect a purchased item from damaging or contaminating other purchased items, (3) used to contain an unwrapped food item, or (4) designed to be placed over clothes (§§ 42280 (f) and (g) and 42283 (a)).

In phase two, convenience food stores, foodmarts, and any similar retail entities must comply with the requirements on and after July 1, 2016. Furthermore, any retail establishment not covered by the law may make an irrevocable written notice of voluntary compliance (§§ 42283.5, 42280 (g) and 42283).

## **SELLING OR DISTRIBUTING REUSABLE OR RECYCLABLE BAGS**

The law prohibits stores from selling or distributing a reusable grocery bag or recycled paper bag at the point of sale for less than 10 cents. Table 1 shows the requirements for reusable bags made from plastic film and those made from any other natural or synthetic fabric.

**Table 1. Reusable Bag Requirements**

<b><i>Requirements for All Reusable Bags</i></b>	
<ul style="list-style-type: none"><li>• Capable of carrying 22 pounds over a distance of 175 feet</li><li>• Has a handle and designed for at least 125 uses</li><li>• Has a volume capacity of 15 liters</li><li>• Machine washable or made of a material that can be cleaned and disinfected</li><li>• Has a tag naming the manufacturer, country of origin, and information on the reusable or recyclable nature of the bag</li><li>• Does not contain any toxic materials</li><li>• Complies with federal regulations related to claims that the bag is recyclable (if applicable)</li></ul>	
<b><i>Requirements By Bag Type</i></b>	
Made from Plastic Film	<ul style="list-style-type: none"><li>• At least 2.25 mils thick</li><li>• At least 20% recycled material by 1/1/16</li><li>• At least 40% recycled material by 1/1/20</li><li>• Recyclable in the State</li><li>• Has a statement on the tag that says the bag is made partly/wholly from postconsumer recycled material</li></ul>

Made from any other natural or synthetic fabric	<ul style="list-style-type: none"> <li>• Must be sewn</li> <li>• Has a minimum fabric weight of at least 80 grams per square meter</li> </ul>
---	---

Source: Senate Bill 270, § 42281.

The law also contains other provisions addressing (1) when a store can use compostable bags (only if a majority of households in the jurisdiction have curbside collection of compostable food waste), and (2) the provision of free, reusable bags to customers using public assistance vouchers or payment cards (§§ 42283 (e) and (d)).

## COMPLIANCE

### ***Store Operators***

The law requires store operators that make recycled paper or reusable grocery bags available to comply with the provisions of statute and requirements of the at-store recycling program. The money collected by the store can only be used for the costs associated with compliance, actual costs of providing recycled paper bags or reusable grocery bags, or costs associated with a store's educational materials or campaign encouraging the use of reusable bags (§§ 42283.6(a) and 42283.7).

### ***Producer of Reusable Grocery Bags Certified by Third-Party Entity***

The California law requires producers that sell or distribute reusable grocery bags made from plastic film to be certified by a third-party entity. The third-party certification entity must be an independent, accredited laboratory (§§ 42281.5 and 42282(c)).

The producer of reusable grocery bags is required to provide proof of certification showing that the reusable grocery bags comply with the law. The proof of certification must include the following information: (1) all sources and suppliers of postconsumer recycled material, (2) the quantities and dates of purchases by the reusable grocery bag producer, (3) how the postconsumer material is obtained, and (4) evidence that the postconsumer recycled material is appropriately cleaned (§ 42281.5).

The law mandates that the department accept proof of certification from a reusable grocery bag producer. The law requires that a third-party certification entity conducts the certification for each type of reusable grocery bag manufactured, imported, sold, or distributed in the state. The producer must resubmit the proof of

certification to the department every two years and provide an updated proof of certification if any modification that is not solely aesthetic is made to a previously certified reusable bag (§§ 42282 (a) and (b)).

The law authorizes the department to establish a fee that all producers seeking certification must pay. The fee must cover but not exceed the department's reasonable costs to implement its duties regarding producer certification (§ 42282.1).

## ENFORCEMENT

The law permits cities, counties, and the state to impose civil liability on a person or entity that violates its provisions. Table 2 below shows the penalty amounts per day for the first, second, third, and subsequent violations.

**Table 2. Penalties for Violating Plastic Bag Ban**

<i><b>Violation</b></i>	<i><b>Amount</b></i>
First	\$1,000 per day
Second	\$2,000 per day
Third and any subsequent	\$5,000 per day

Source: Senate Bill 270, § 42285 (a).

A person or entity in violation of the law is to pay the fine to the office that brings the action. When the state brings the action, the resulting penalties may be expended by California's attorney general, upon appropriation by the legislature (§ 42285 (a) and (b)). The act is silent on due process procedures for alleged violators, but an official at the department indicated the due process procedures will be those of the jurisdiction that brings the action. This means an action brought by a city will have that city's due process. The same department official said that different jurisdictions will have to collaborate to avoid more than one jurisdiction bringing an action against an operator for the same violation (the law is also silent on this point).

## APPROPRIATION

The law appropriates \$2 million to California's Recycling Market Development Revolving Loan Subaccount to provide loans for the creation and retention of jobs and for the manufacture and recycling of plastic reusable grocery bags that use recycled content. It also permits the Recycling Market Development Revolving Loan Subaccount to provide loans for machinery and facilities for the manufacture of durable reusable grocery bags that meet the requirements of the act (§§ 42288 (a) and (b)).

## **PREEMPTION**

The law prohibits cities, counties, or other public agencies from enforcing or implementing policies related to reusable grocery bags, single-use carryout bags, or recycled paper bags, that were adopted on or after September 1, 2014. The law does not preempt local ordinances, resolutions, regulations, or rules adopted before September 1, 2014. Those entities are able to continue enforcing and implementing local policies, but may not adopt or amend them, except that they may increase the price of a reusable bag as long as it complies with the state law (§§ 42287 (b) and (c)).

## **REFERENDUM**

Although the legislature passed and the governor signed SB 270, California may hold a referendum to overturn the law. Last month, opponents of SB 270 submitted over 800,000 signatures calling for a referendum. Opponents of the law need 504,000 verified signatures to trigger a referendum and the California secretary of state is currently verifying signatures. Whether or not the referendum qualifies should be announced by February 25, 2015. According to the department, should the referendum qualify, the implementation of SB 270 will be placed on hold until California voters decide in the November 2016 election whether the act should remain law.

EJ/JM:jk